



August 30, 2000

Mr. Mario A. Griffin  
Director  
Paso Del Norte Academy  
801 North Stanton  
El Paso, Texas 79902

OR2000-3361

Dear Mr. Griffin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138902.

The Paso Del Norte Academy (the "school") has responded to a request for six categories of information related to termination of employment of school employees for the five year period proceeding the request. You indicate that you have released information responsive to five of these categories.<sup>1</sup> However, you seek to withhold "the reason or reasons for employees' termination or resignation," under section 552.102 of the Government Code. You have supplied a responsive sample of this information.<sup>2</sup>

The request was directed to Gateway Student Alternative Program, Inc. ("SAPI"). You inform this office that the school is only one component of SAPI, and that the school construes the request to apply to school records rather than to SAPI records generally. You also inform this office that the school was designated as a "charter school" in November

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<sup>1</sup>We note that release of information responsive to those categories implicates section 552.117 of the Government Code, which prohibits the release of the home addresses, home telephone numbers, social security numbers, or personal family members information of public employees who requested that this information be kept confidential under section 552.024 prior to receipt of the request for information. We caution you that release of confidential information is made criminal by the Government Code. Gov't Code § 552.352.

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

of 1998. You contend that school records that predate that designation are not subject to the Public Information Act.<sup>3</sup> You therefore construe the request to apply to school records from November 1998 to the date of the request. We accept your construction of this request.

Section 552.102 of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Information may be withheld from the public under the common law right of privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). However, the scope of public employee privacy is narrow. Open Records Decision No. 423 at 2 (1984). As regards reasons for termination, we note that because the work behavior of an employee and the conditions for his continued employment are matters of legitimate public interest, the common law right of privacy does not protect facts about a public employee's misconduct on the job or complaints made about his performance. See Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees). We conclude that the information responsive to category 3 is not excepted from disclosure by section 552.102 of the Government Code. This information must therefore be released to this requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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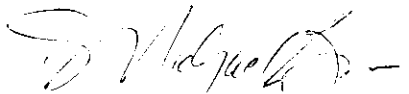
<sup>3</sup> The disclosure requirements of the Public Information Act apply only to information collected assembled or maintained under law or ordinance or in connection with the business of a governmental body. Gov't Code § 552.002(a). From your representations we assume that the school did not function as a governmental body prior to its designation as a charter school.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/er

Ref: ID# 138902

Encl Submitted documents

cc: Mr. Kevin Howard  
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(w/o enclosures)